THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

A.S.No. 989 OF 1999

Date:06.02.2013

JUDGMENT :

The defendant in O.S.No.271 of 1995 on the file of the Principal Senior Civil Judge at Warangal is the appellant herein. The suit was filed for past maintenance, future maintenance and also for recovery of the cash and gold ornaments presented at the time of marriage.

2. The allegations in the plaint goes to show that the marriage between the plaintiff and the defendant was performed on 29.5.1991 and at the time of marriage, the plaint A schedule property was given to the defendant with absolute rights to the plaintiff. They were handed over to the defendant. The plaintiff and defendant lived together for six months. Thereafter, the defendant started ill-treating her for getting more money from her parents. In spite of the patience shown by the plaintiff, there was no change in the attitude of the defendant. Hence, legal notice was given and past maintenance was claimed at Rs.1,000/- and future maintenance was also claimed at the same rate.

3. The defendant has filed written statement contending that there is no legally valid relationship of marriage between the plaintiff and the defendant. According to him, the plaintiff was already married to one Mallesham and that fact was

suppressed and that marriage was therefore performed in the year 1991, which is not valid. Further, when there was no legal divorce, the claim of the plaintiff for maintenance against the defendant is not valid. The plaintiff also filed criminal case and the defendant has filed an application for divorce and they are pending. The allegation that plaint A schedule property was given at the time of marriage is not true and therefore the suit is liable to be dismissed.

4. On the basis of the above pleadings, necessary issues have been framed and after considering the evidence on record, the court has decreed the suit of the plaintiff and aggrieved by the said Judgment, the present appeal is filed.

5. The points that arise for consideration are:

(1) Whether there is valid marriage between the plaintiff and the defendant?

(2) Whether the parents of the plaintiff have presented the plaint A schedule property to the defendant and if so, the plaintiff is entitled for recovery of the same?

(3) Whether the past and future maintenance claimed by the plaintiff is returnable and decree granted by the Court below is legal?

6. POINTS 1 to 3:

The appellant did not dispute about the fact that he married the plaintiff in the year 1991. The contention advanced on behalf of the appellant is that the marriage is void since by that date, there was already a living spouse for the plaintiff and the marriage was not legally dissolved and

consequently, the suit is liable to be dismissed. The lower court has rejected the contention on the ground that there was customary divorce proved by the plaintiff and also found that in fact the decree about declaration that the plaintiff is not the wife of Mallesham was obtained under Ex.B1 long prior to the marriage with the defendant and consequently, it cannot be said that the plaintiff is not the wife of the defendant.

7. Repeating the same contentions which were raised before the Court below and in the grounds of appeal before this Court, it was contended that the marriage of the plaintiff and defendant is *void ab initio* and there is no decree of divorce and consequently the plaintiff claim cannot be accepted. It is not in dispute that under Section 29(2) of the Hindu Marriage Act, 1955, a customary divorce in a particular community is recognized. Though there is no authority as to recognition of this custom, a resolution in the 'Padmashali' community to which the parties belong to, the Court below on the basis of evidence of P.W.3 has accepted the same. No incidents of such customary divorce in other families have been produced before the Court below except the evidence of P.W.3. In order to recognize the custom in a particular community about the customary divorce there shall be evidence on the side of the plaintiff to show that such marriages have been dissolved in other families also. But in this case there is no such evidence except the evidence of P.W.3. It cannot, but be

held that the evidence of such nature is insufficient to recognize a custom in the community as a whole. But, however, in this case, apart from the alleged custom, the plaintiff herself has filed O.S.No.893 of 1986 on the file of the District Munsiff, Karimnagar, for declaration that there is no relationship of wife and husband between herself and Mallesham and the said suit has been decreed on 21.8.1986 referring to previous marriage. Even if it is to be taken into account that the customary divorce is not proved still the marital status of a person is being personal and when once a decree of proper Court has been obtained declaring that the plaintiff is not wife of Mallesham, then in such circumstances, it cannot be said that by the date of marriage in 1991 of the plaintiff with the defendant, the plaintiff continued to be the wife of Mallesham. Therefore, in those circumstances, it cannot, but be held that by virtue of Ex.B1 decree, the plaintiff is declared as not the wife of Mallesham and consequently the question of marriage with Mallesham and its validity has no relevancy. The defendant, therefore, cannot plead that his marriage with the plaintiff is void on the ground that the plaintiff was having another spouse by the date of his marriage.

8. So far as the presentation of the articles in A schedule is concerned, the plaintiff has relied upon Ex.A1. P.W.3 is the person who performed the marriage and he scribed Ex.A1 and the claims made by the plaintiff have been referred in Ex.A1. P.W.4 also spoke about the person and

also the contention in Ex.A1 and in fact Ex.A1 was signed by the defendant and his father, thereby acknowledging the contents in Ex.A1 being true. That being so, when once the properties mentioned in Ex.A1 were admittedly received by the defendant, he cannot say that he is not liable to return the same. So far as the quantum of maintenance is concerned, a sum of Rs.1,000/- only has been granted and it cannot be said to be excessive or untenable taking into consideration of the present days living conditions.

9. Therefore, in view of the above reasons, I find no merits in the Appeal and the same is dismissed. There shall be no order as to costs.

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N.R.L.NAGESWARA RAO,J

Date:06.02.2013
KVS

THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

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